

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**THE UNITED STATES OF AMERICA, for
the use and benefit of
MESA VERDE ENTERPRISES, INC.,
a New Mexico corporation,**

Plaintiffs,

v.

NO.: 2:11-cv-180-MV-CG

**SOUTHWEST CONCRETE PAVING CO.,
an Arizona corporation,
TOLTEST, INC., an Ohio corporation,
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a Maryland corporation, and
ZURICH AMERICAN INSURANCE COMPANY,
a New York corporation,**

Defendants.

**SOUTHWEST CONCRETE PAVING. CO.,
an Arizona corporation,**

Counterclaimant,

v.

**MESA VERDE ENTERPRISES, INC.,
a New Mexico corporation,**

Counterdefendant.

ORDER

THIS MATTER, having come before the Court on February 13, 2012 for the hearing on Plaintiffs' *Motion to Compel Discovery from Defendant Toltest* [Doc. 63] and Plaintiffs' *Motion to Compel Responses to Requests for Production from Southwest Paving Concrete Co.* [Doc. 64], Plaintiffs appearing by and through their attorney John D. Wheeler of the law firm of John D. Wheeler & Associates, a Professional Corporation, and Defendants

appearing by and through their attorney Chase Halsey of the law firm of Cheifetz Iannitelli Marcolini, P.C. and the Court being otherwise fully informed and advised **HEREBY FINDS:**

1. It is just and proper that Plaintiffs' *Motion to Compel Discovery from Defendant Toltest* [Doc. 63] be granted.

2. It is just and proper that Plaintiffs' *Motion to Compel Responses to Requests for Production from Southwest Paving Concrete Co.* [Doc. 64] be denied.

3. By virtue of Rule 37(a)(5)(A) Fed.R.Civ.P., it is just and proper that Defendant Toltest be ordered to pay Plaintiff's "reasonable expenses incurred in making the motion, including attorney's fees" with respect to Plaintiff's *Motion to Compel Discovery from Defendant Toltest* [Doc. 63].

4. By virtue of Rule 37(a)(5)(A)(i) Fed.R.Civ.P., it is just and proper that Defendant Southwest **not** be ordered to pay Plaintiff's expenses in that Plaintiff did not first confer with Defendant Southwest prior to filing Plaintiff's *Motion to Compel Responses to Requests for Production from Southwest Paving Concrete Co.* [Doc. 64].

5. Because of delay on the part of Defendant Toltest, it is just and proper that the discovery deadline be extended to March 2, 2012, to allow for the completion of the depositions of Bob Carl and Dan Raymond.

6. Because of delay on the part of Defendant Toltest, it is just and proper that Defendant Toltest produce Bob Carl and Dan Raymond for depositions on March 1, 2012 in Alamogordo, New Mexico, at the expense of Toltest.

7. It is just and proper that Defendant Southwest produce supplemental responses to discovery by February 20, 2012.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- A. Plaintiffs' *Motion to Compel Discovery from Defendant Toltest* [Doc. 63] be and hereby is GRANTED;
- B. Plaintiff's *Motion to Compel Responses to Requests for Production from Southwest Paving Concrete Co.* [Doc. 64] be and hereby is DENIED;
- C. The discovery deadline for the parties be and hereby is extended to March 2, 2012;
- D. Defendant Toltest be and hereby is ordered to produce Bob Carl and Dan Raymond for depositions on March 1, 2012 in New Mexico;
- E. Defendant Southwest be and is hereby ordered to produce supplemental responses to discovery by February 20, 2012;
- F. Defendant Toltest be and hereby is ordered to pay Plaintiffs' reasonable attorney's fees in the amount reflected in a properly filed affidavit. In the event that Defendant Toltest disagrees with the amount expressed in the affidavit, Defendant shall file an objection within ten (10) days of filing of the affidavit.



THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE

APPROVED:

JOHN D. WHEELER & ASSOCIATES
a Professional Corporation

/s/submitted electronically
by: _____
John D. Wheeler

CHEIFETZ IANNITELLI MARCOLINI

/s/ approved via email 2-17-12
by: _____
Chase Halsey